

Repelling Encroachment by Foreigners into U.S. Elections (REFUSE) Act

Representative Marcy Kaptur (D-OH-09)

Endorsed by: Public Citizen, Common Cause, the Campaign Legal Center, and the Sunlight Foundation

Section-by-Section

Special interest money bleeds into our elections through two main arteries: 1) corporate “connected” PACs and 2) 501(c)(4)s. In particular, 501(c)(4)s are a major source of “dark money” in American politics--unlimited, secret (undisclosed) donations from corporations, individuals, and unions. The Supreme Court’s decision in *Citizens United v. FEC* (2010) allowed corporations to spend unlimited amounts of money to support candidates and PACs. Right now, foreign nationals cannot contribute directly to U.S. elections. However, because of *Citizens United*, foreign-controlled corporations registered in America can. Further, 501(c)(4)s can funnel unlimited dark money straight to Super PACs; those Super PACs can then spend unlimited sums of money promoting or opposing political candidates.

The REFUSE Act would stem the flow of foreign money in American elections and increase transparency around foreign election influence through two major reforms. First, the bill would prohibit election spending by foreign-influenced corporations (including through connected PACs) and 501(c)(4) organizations at two thresholds of foreign ownership interest/funding: 20% for foreign nationals and a more strict 5% if those foreign parties are directly connected to foreign governments. **Second**, the bill would modernize and tighten the reporting requirements of the Foreign Agents Registration Act (FARA) and expand the Department of Justice’s FARA enforcement authority.

Section 1: Short Title—the “**Repelling Encroachment by Foreigners into U.S. Elections Act**” or the “**REFUSE Act**.”

Title I: Restrict Foreign and Dark Money in Elections

Section 101: Amends Section 319(b) of the Federal Election Campaign Act of 1971 (FECA) to clarify and expand the “foreign national” definition. The expanded definition includes: separate segregated funds of corporations incorporated or with their principle place of business in a foreign country *and* American corporations that are foreign-influenced. A corporation is “foreign influenced” if foreign nationals directly connected with foreign governments control 5% total equity or foreign nationals not directly connected with a foreign governments control 20% total equity.

Section 102: Bans foreign-affiliated 501(c)(4)s from contributing to super PACs, making independent expenditures, or distributing electioneering communications. A 501(c)(4) is defined under this section as “foreign affiliated” if (a) foreign nationals directly connected with foreign governments provide 5% total funding or (b) foreign nationals not directly connected with foreign governments provide 20% total funding.

Section 103: Expands the ban prohibiting foreign nationals from contributing to elections under Section 319 of FECA to include state or local ballot initiatives or referendums. Amends Section 319 of FECA to prohibit foreign nationals’ involvement in the decision-making process with regard to election activities or the administration of a PAC.

Section 104: Amends Section 304 of FECA to require candidates for political office (including non-incumbents) to report to the Federal Election Commission if they accept money donated by a lobbyist on behalf of a foreign client and also are lobbied by that lobbyist on behalf of that foreign client within a 6 month window before or after the donation was received. Reporting to the FEC must happen within a 10-day deadline that attaches to either the contact or the contribution: sometimes the contribution comes after the contact and sometimes the contact comes after the contribution; the deadline follows whichever happened last.

Section 105: Establishes that the provisions of this Act shall apply with respect to elections occurring after December 2018.

Title II: Reform of Foreign Agents Registration Act of 1938

Section 201: Repeals the exemption from FARA registration requirement for lobbyists registered under the Lobbying Disclosure Act (LDA) and replaces the FARA biannual registration filing timeline with the LDA quarterly filing timeline.

Section 202: Clarifies that only those who file for and receive an exemption from the Attorney General are exempt from FARA registration requirements.

Section 203: Amends FARA to require registrants to file informational materials if they are distributed to any person—even if only a single recipient—and adds a requirement that when filing this information, registrants provide a statement to include: the name of each original recipient of the materials and the original date on which the materials will be distributed.

Section 204: Adds a definition of “informational materials” to FARA: to include any oral, visual, graphic, written, or pictorial information or matter of any kind, including matter published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, social media, or any means or instrumentality of interstate or foreign commerce or otherwise.

- Contains an exemption from filing requirements if the informational material at issue was disseminated as part of an activity exempt from registration under this Act.
- Clarifies that an identification statement within a foreign agent’s social media account descriptor is sufficient -- no need to include an identification statement with every post.

Section 205: Conveys civil investigative authority to the Attorney General to enforce FARA.

Section 206: Authorizes the Attorney General to establish and collect registration filing fees to help defray costs of the FARA Registration Unit (responsible for the administration and enforcement of FARA).

Section 207: Requires the Attorney General to promulgate final regulations for the implementation of a comprehensive strategy to improve enforcement and administration of FARA. Requires the Inspector General of the Department of Justice to review that comprehensive strategy and requires the Inspector General to issue a report to Congress on the results of that review. Requires the Attorney General to report to Congress a detailed description of the methods undertaken to ensure that reports filed under FARA are filed electronically in a digitized format which will enable the Foreign Agents Registration Unit website to be fully searchable, sortable, downloadable, and machine-readable. Requires the Attorney General to implement the methods described in the report.

Section 208: Stipulates that within three years of the enactment of this Act, the Comptroller General of the United States shall analyze the effectiveness of the enforcement and administration of FARA, including the extent to which the amendments made by this title have improved the enforcement and administration of this Act, and submit that analysis to the Attorney General, the Inspector general of the DOJ, and the appropriate committees of Congress.

Section 209: Defines “appropriate committees” as: the Committees on the Judiciary and Foreign Relations of the Senate and the Committee on the Judiciary of the House of Representatives.

Section 210: Establishes that the amendments made by this title shall take effect 180 days after the date of enactment of this Act.